

# CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

## Statement of Explanation

### Title 18. Public Revenues

Regulation 1435, *Tax Paid Twice on Diesel Fuel*

Regulation 1436, *Returned Sales*

#### **A. Factual Basis**

Chapter 3 (commencing with section 1411) of division 2 of title 18 of the California Code of Regulations (chapter 3) contains regulations that implement, interpret, or make specific the provisions of the Diesel Fuel Tax Law (Law) (part 31 (commencing with section 60001) of division 2 of the Revenue and Taxation Code), which generally imposes an excise tax on diesel fuel sold in this state. Section 60601 of the Diesel Fuel Tax Law requires the State Board of Equalization (BOE) to enforce the excise tax and authorizes the BOE to prescribe, adopt, and enforce regulations relating to its administration and enforcement. The BOE hereby proposes to change the Diesel Fuel Tax regulations listed above under California Code of Regulations, title 1, section (Rule) 100 to correct outdated citations in their reference notes.

Section 60501 of the Law allows a supplier, as defined, to claim a refund of the tax paid on diesel fuel under specific circumstances. For example, and as relevant here, section 60501, subdivision (a)(4)(J), permits a supplier to claim a refund for tax paid on diesel fuel if the fuel was “[r]emoved from an approved terminal at the terminal rack, but only to the extent that the supplier can show that the tax on the same amount of diesel fuel has been paid more than one time by the same supplier.”

Section 60508 of the Law was amended, effective January 1, 2010 (Stats. 2009, ch. 545 (Assem. Bill No. (AB) 1547)), to permit a supplier to take a credit in lieu of a refund of tax paid on diesel fuel that is exported, removed, sold, or used by the supplier in a manner that would entitle the supplier to a refund under article 1 (commencing with section 60501) of chapter 8 of the Law, including, but not limited to, section 60501, subdivision (a)(4)(J). At the same time, section 60508.4 of the Law, which permitted a supplier to take a credit in lieu of a refund under the circumstances set forth in section 60501, subdivision (a)(4)(J), was repealed by AB 1547, effective January 1, 2010.

Regulation 1435, *Tax Paid Twice on Diesel Fuel*, and Regulation 1436, *Returned Sales*, of chapter 3 were both adopted on March 27, 2002, to, among other things, implement, interpret, and make specific the provisions of section 60508.4 of the Law, which permitted a supplier to take a credit in lieu of claiming a refund under section 60501, subdivision (a)(4)(J). Accordingly, the BOE included citations to section 60508.4 in Regulation 1435’s and Regulation 1436’s reference notes. Therefore, the BOE has concluded that, as a result of the amendments made to section 60508 and the repeal of section 60508.4 by AB 1547, it is necessary to replace the citations to section 60508.4 with citations to section 60508 in the reference notes for these two regulations and the BOE proposes to make the changes under Rule 100.

## **B. Proposed Changes**

### **1. Rule 100 Changes to Regulation 1435, *Tax Paid Twice on Diesel Fuel***

A Rule 100 change is proposed to replace “60508.4” with “60508” in the reference note for Regulation 1435 to replace a repealed statutory reference with a more current statutory reference.

### **2. Rule 100 Changes to Regulation 1436, *Returned Sales***

A Rule 100 change is proposed to replace “60508.4” with “60508” in the reference note for Regulation 1436 to replace a repealed statutory reference with a more current statutory reference.

The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, these changes are necessary to replace a repealed statutory reference with a more current statutory reference and account for amendments to the Law made by AB 1547.

## PROPOSED CHANGES

1. Change Regulation 1435 (Tax Paid Twice on Diesel Fuel) to read as follows:

### **Regulation 1435. Tax Paid Twice on Diesel Fuel.**

(a) . . . (unchanged).

(b) . . . (unchanged):

(1) . . . (unchanged);

(2) . . . (unchanged);

(3) . . . (unchanged);

(4) . . . (unchanged); and

(5) . . . (unchanged).

(c) . . . (unchanged).

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(A) . . . (unchanged):

1. . . . (unchanged); or

2. . . . (unchanged).

(B) . . . (unchanged):

1. . . . (unchanged); or

2. . . . (unchanged).

(C) . . . (unchanged).

1. . . . (unchanged).

2. . . . (unchanged).

(D) . . . (unchanged).

(E) . . . (unchanged).

(d) . . . (unchanged):

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(4) . . . (unchanged).

(5) . . . (unchanged).

(6) . . . (unchanged).

(7) . . . (unchanged).

EXHIBIT A . . . (unchanged).

EXHIBIT B . . . (unchanged).

Note: Authority cited: Section 60601, Revenue and Taxation Code. Reference: Sections 60051, 60052, 60501, 60507, 60508~~60508.4~~ and 60521.5, Revenue and Taxation Code.

2. Change Regulation 1436 (Returned Sales) to read as follows:

**Regulation 1436. Returned Sales.**

(a) . . . (unchanged).

(b) . . . (unchanged).

(c) . . . (unchanged):

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(4) . . . (unchanged).

(d) . . . (unchanged):

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(4) . . . (unchanged).

(5) . . . (unchanged).

Note: Authority cited: Section 60601, Revenue and Taxation Code. Reference: Sections 60025, 60501 and 60508~~60508.4~~, Revenue and Taxation Code.